

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TERRY REED,

Petitioner,

-v.-

9:00-CV-1177
(GLS)(RFT)

GEORGE DUNCAN, Superintendent,
Great Meadow Corr. Facility;

Respondent.

APPEARANCES:

TERRY REED
Petitioner, *pro se*
97-B-0929

GARY L. SHARPE, U.S. DISTRICT JUDGE

ORDER

Terry Reed ("Reed" or "Petitioner") filed a Petition for a Writ of Habeas Corpus with the Court which was recommended denied and dismissed by the Report-Recommendation of Magistrate Judge Randolph F. Treece. Docket No. 45. That Report-Recommendation was approved, and the Petition dismissed, by Decision and Order of this Court filed January 12, 2007. Docket No. 62. Reed has appealed that dismissal to the Second Circuit and now seeks a Certificate of Appealability ("COA"). Docket No. 69.¹ Respondent filed opposition to the issuance of a COA in this action after petitioner filed his notice of appeal. Docket No. 67.

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

¹The Second Circuit dismissed Reed's appeal without prejudice to its being reinstated upon decision by this Court granting or denying petitioner's request for a COA. Docket No. 68.

(B) the final order in a proceeding under section 2255.²

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file in this action, and for the reasons set forth in the December 10, 2003 Report and Recommendation, and this Court's January 12, 2007 Order, the Court finds that Reed has failed to make such a showing herein. Therefore, the Court denies his request.

WHEREFORE, it is hereby

ORDERED, that Petitioner's Application for a Certificate of Appealability (Docket No. 69) is denied, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

March 20, 2007
Albany, New York



Gary L. Sharpe
United States District Court Judge

² Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." See Fed.R.App.P. 22(b).